THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
and
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 18765 of 2004

O R D E R: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed questioning the order dated 18.6.2004 passed by the Central Administrative Tribunal in O.A. No. 480 of 2003.

Heard Sri R.S. Murthy, learned standing counsel for Railways appearing for the petitioners and Sri P. Naveen Rao for the respondent and perused the material available on record.

The case of the petitioners is that the respondent while functioning as Mail Guard/GNT committed serious misconduct by remaining himself unauthorisedly absent without prior sanction of leave or observing Railway Medical Attendance Rules during the period from 3.7.1999 to 30.5.2000 and he failed to maintain absolute devotion to duty and thereby contravened Rule 3(1)(ii) of Railway Services (Conduct) Rules, 1966. It is further stated that the charges were framed for the lapses committed by the respondent and sufficient opportunity was given and based on the findings in the enquiry and the evidence on record the disciplinary authority has imposed the penalty of removal from service from 10.9.2001 vide

Order No. B/P.5/VI/2000-2001 dated 4.9.2001 and the appeal and the revision filed by the respondent were also rejected by the concerned authorities. The grievance of the petitioners is that the Tribunal has not considered all these aspects and directed to reconsider the matter afresh and therefore the same is liable to be set aside.

The respondent filed counter affidavit stating that as the removal from service was disproportionate to the delinquency alleged and proved against him, the Tribunal rightly directed to reconsider the matter on the quantum of penalty. It is further stated that his absence from duty was not deliberate and it was due to illness and the entire period of illness is covered by medical reports, but the same were not accepted by the disciplinary authority on the technical ground that the reports are not from the Railway Hospital. It is stated that no verification as required under Rule 538 of the Indian Railway Medical Rules was done on the medical reports submitted by him and interpreting the provisions wrongly, disproportionate punishment has been imposed against him.

Having regard to the facts and circumstances and having verified the order passed by the Tribunal, we are not in agreement with the contention that the Tribunal has not considered the matter in proper perspective. The Tribunal, in fact, has considered the matter at great length and discussed the various case law on the point and come to the conclusion that the absence of the respondent

– applicant from duty was not deliberate. The death of the respondent's wife in the year 1995 and the criminal proceedings initiated by the father-in-law for maintenance of the three young children would have added, as rightly pointed by the Tribunal, to the sickness of the respondent among other factors and the material available on record discloses that the absence of the respondent from duty was not deliberate. The Tribunal further observed that the petitioners – respondents themselves stated in their counter filed in the O.A. that it was for the first time that the respondent – applicant had stayed away from work for such a long time which was earlier never found in the service career of the respondent – applicant. Therefore, keeping in view all the facts and circumstances, the Tribunal directed the petitioners herein to reconsider the matter to award lesser penalty in place of dismissal from service. Having regard to the facts and circumstances, we do not find any error in the order passed by the Tribunal warranting interference of this Court. However, having regard to the submission made by the learned standing counsel for the petitioners, we direct the petitioners to modify the punishment of dismissal from service to that of appointment afresh with a condition that the respondent – applicant should take last seniority in the pay-scale which he was holding prior to his dismissal from service. We also make it clear that the petitioner is not entitled for any backwages and that it shall not become

precedent for the future cases.

The writ petition is disposed of with the above directions.

T. MEENA

KUMARI, J.

G. CHANDRAIAH, J.

Date: 03-09-2007.

MVB.